

145 FERC ¶ 61,285
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 27, 2013

In Reply Refer To:
Blue Sky West, LLC
Docket No. ER14-364-000

Crowell & Moring, LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Attn: Deborah A. Carpentier
Attorney for Blue Sky West, LLC

Dear Ms. Carpentier:

1. On November 8, 2013, Blue Sky West, LLC (Blue Sky West) filed a request for a limited waiver of Market Rule 1 under ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would permit consideration of corrected data that Blue Sky West submitted to ISO-NE regarding Blue Sky West's unit specific offer floor for ISO-NE's Eighth Forward Capacity Auction (FCA 8). As discussed below, the Commission grants the requested waiver.
2. Blue Sky West states that it is developing a 186 MW wind-powered generation facility near Mayfield Township, Maine. Blue Sky West avers that it cleared the 6th and 7th FCAs and has Capacity Supply Obligations for the 2015-2016 and 2016-2017 delivery periods. Blue Sky West notes that, because of recent revisions to the Forward Capacity Market (FCM) rules, Blue Sky West's offer is subject to an Offer Review Trigger Price for FCA 8.¹ Blue Sky West states that on June 17, 2013, it submitted its New Capacity Qualification Package, proposing a unit specific offer floor below the Offer Review Trigger Price. Subsequently, Blue Sky West discovered an error in the data it submitted

¹ Blue Sky West Request for Waiver at 2 (citing *ISO New England Inc.*, 138 FERC ¶ 61,027 (2012), *order on compliance filing*, 142 FERC ¶ 61,107 (2013)).

which overstated the unit specific offer floor.² On July 26, 2013, Blue Sky West submitted corrected data to ISO-NE, showing that the unit specific offer floor was lower than it initially indicated in its New Capacity Qualification Package.³

3. Blue Sky West states that on September 27, 2013, ISO-NE issued a Qualification Determination Notification (QDN) to Blue Sky West that reflected the initial unit specific offer floor that Blue Sky West submitted, rather than the corrected unit specific offer floor. ISO-NE indicated that although the revised unit specific offer floor would satisfy Tariff requirements, there is no error correction process in Market Rule 1. ISO-NE advised Blue Sky West to request a waiver from the Commission to allow ISO-NE to use the corrected data in its qualification determination for FCA 8. Blue Sky West therefore requests a limited waiver of section III.13.1.1.2.2.3 of Market Rule 1 in ISO-NE's Tariff⁴ to permit ISO-NE to use the corrected data in its qualification determination for FCA 8.⁵

4. In support of its request, Blue Sky West contends that its request for waiver is consistent with prior situations in which the Commission has granted a waiver.⁶ Blue Sky West asserts that its underlying error was made in good faith, that it submitted corrected data two months prior to the QDN date, and that ISO-NE has not taken issue with the corrected data. Blue Sky West asserts that the waiver is of limited scope because it allows Blue Sky West to correct an error well before the auction, does not delay the auction, and does not conflict with any provision of Market Rule 1. Blue Sky West asserts that the waiver would remedy a concrete problem, asserting that Blue Sky West will very likely not clear FCA 8 unless the correction is permitted because ISO-NE

² Specifically, Blue Sky West states that it used an incorrect benchmark for assigning a value to renewable energy credits. Blue Sky West also states that it needs to correct the capacity factor and certain data inputs included in the rate of return. Blue Sky West Request for Waiver at 3 n.8.

³ Blue Sky West Request for Waiver at 2.

⁴ Section III.13.1.1.2.2.3 of the Tariff requires all new generating capacity resources that might submit offers in the FCA at prices below the relevant Offer Review Trigger Price to include in the New Capacity Qualification Package the lowest price at which the resource requests to offer capacity in the FCA and to justify that price as competitive in light of the resource's costs. ISO-NE, Transmission, Markets and Services Tariff § III.13.1.1.2.2.3 (21.0.0).

⁵ Blue Sky West Request for Waiver at 2-3.

⁶ *Id.* at 5 (citing *PPL EnergyPlus, LLC*, 142 FERC ¶ 61,177 (2013)).

would rely on an offer floor that likely will exceed the FCA 8 clearing price. Thus, Blue Sky West states that it would not be compensated for the capacity during the 2017-2018 delivery period that it already has committed to make available to ISO-NE pursuant to prior auctions that were conducted under different rules. In addition, Blue Sky West asserts that granting the waiver will have no undesirable effects or impact on third parties because correction of the error will not delay ISO-NE's implementation of FCA 8 and there is no change in the MW of qualified New Capacity Resources identified in the FCA 8 informational filing.⁷

5. Blue Sky West requests that the Commission issue an order granting waiver well before FCA 8 is conducted on February 3, 2014.⁸ Blue Sky West states that action is necessary to enable ISO-NE to issue a revised determination.⁹

6. Notice of Blue Sky West's filing was published in the *Federal Register*, 78 Fed. Reg. 70,029 (2013), with protests or interventions due on or before November 29, 2013. ISO-NE submitted a motion to intervene and comments. The New England Power Pool Participants Committee submitted an out-of-time motion to intervene on December 2, 2013. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

7. In its comments, ISO-NE states that it does not oppose the waiver request and that it believes that Blue Sky West's error was inadvertent and made in good faith. Additionally, ISO-NE states that the Internal Market Monitor cannot accept Blue Sky West's requested offer without this Commission granting a waiver of the new capacity qualification and QDN deadlines in the Tariff.¹¹

8. The Commission has granted one-time waivers of tariffs in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope;

⁷ *Id.* at 3-4.

⁸ *Id.* at 1.

⁹ *Id.* at 4.

¹⁰ 18 C.F.R. § 385.214 (2013).

¹¹ ISO-NE Comments at 4.

(3) granting a waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹²

9. We find that Blue Sky West has demonstrated good cause to grant the request for waiver because Blue Sky West's requested waiver satisfies the aforementioned conditions. First, we find that Blue Sky West's error was made in good faith. As Blue Sky West explains, it made an error in compiling the appropriate cost data for its unit specific offer floor, and upon realizing the error, Blue Sky West provided ISO-NE with corrected information. Second, the requested waiver applies only to FCA 8, and is limited in scope. Third, the waiver will remedy a concrete problem, because absent a correction of the error, Blue Sky West would be entering FCA 8 with a unit specific offer floor that does not accurately reflect its costs. Fourth, we find that granting the waiver will not lead to undesirable consequences, such as harm to third parties. Further, ISO-NE supports the requested relief, and no parties oppose the request.

10. Accordingly, we grant Blue Sky West's request for a limited waiver of section III.13.1.1.2.2.3 of Market Rule 1 under the ISO-NE Tariff to permit consideration of Blue Sky West's corrected data. The Commission notes that this waiver is limited to the specific and unique facts presented here and does not constitute established precedent that would allow market participants to avoid these or other terms and conditions set forth in the Tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² See, e.g., *ISO New England Inc.*, 142 FERC ¶ 61,051, at P 20 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *ISO New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011).